

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.2448 OF 2005

Purshottam Nanji Tank

...Appellant

Vs.

Municipal Corpn. for Gr. Bombay

...Respondent

Shri I.R.Kulkarni for the Appellant.

Shri J.J.Xavier for the Respondent.

CORAM : A. S. OKA, J.

DATE : AUGUST 11, 2006.

P.C.:

1. Heard the learned Advocate appearing for the Appellant and the learned Advocate appearing for the Respondent. The Appellant is the Plaintiff. The Appellant filed a suit in the City Civil Court for challenging the notice issued by the Respondent-Corporation of demolition of the suit structure. By the impugned judgment and decree the suit has been dismissed. The learned Advocate appearing for the Appellant submitted that without considering the merits of the case, the suit has been dismissed only on the basis of order passed in a Writ Petition by a Division Bench of this court. He submitted that a Review Petition has been filed seeking review of the order passed by this Court in the Writ Petition and the said Review Petition is

pending.

2. I have considered the submissions. It is not in dispute that the order which was subject matter of challenge in the suit was challenged by the present Appellant by filing Writ Petition No.2280 of 2004. By judgment and order dated 29th November, 2004, a Division Bench of this Court dismissed the said Writ Petition on merits.

3. While dismissing the Writ Petition the Division Bench has referred to a civil suit filed by the present Appellant. The Division Bench has also noted that the Appellant's mother had also filed a civil suit earlier which was dismissed.

4. As a Division Bench of this court has upheld the legality and validity of the order which was subject matter of the challenge in the suit, the learned Trial Judge has dismissed the suit by holding that there is no merit in submission of the Appellant. In view of the decision of the Division Bench, no fault can be found with the impugned judgment and decree. The pendency of Review Petition before the

Division Bench has no relevance to the merit of the suit. Accordingly, Appeal is dismissed. No orders as to costs. The Appellant is directed to pay costs awarded by the Trial Court directly to the Respondent-Corporation by an account-payee cheque within period of six weeks from today.

JUDGE